

Federal Trade Commission/Office of the Secretary  
600 Pennsylvania Avenue, NW  
Room H-113 (Annex X)  
Washington, DC 20580

Re: Pet Medications Workshop, Project No. P12-1201

To Whom It May Concern:

I commend the Federal Trade Commission for investigating the pet medication market and coordinated restricted distribution practices undertaken by pet product manufacturers and veterinarians, and I appreciate having had the opportunity to appear at the Workshop held on October 2, 2012.

As I mentioned at the Workshop, I am submitting this letter (and elected to participate in the Workshop) as a pet owner and citizen who is interested in seeing what I believe are necessary changes. While I learned the issues on the job at Walmart, it has been over two years since I was employed by Walmart. My thoughts are now my own and do not necessarily reflect the thoughts or opinions of Walmart. As a way of background, I received my undergraduate degree in economics from Utah State University and my MBA from the Darden School at the University of Virginia. In researching and reviewing the market for pet medications and specialty products, I applied well-established business and economic principles and worked from thorough research on the marketplace, including publicly available data.

The bottom line is that American consumers stand to save hundreds of millions of dollars annually – if steps are taken to inject competition and choice into the marketplace for pet medications and specialty products. The number of pets owned by, and cared for, by Americans will increase, and the market for pet medications and veterinarian services will grow. I urge the FTC to take these steps – much as it did with eyeglasses, and as it did in conjunction with Congress with contact lenses.

There is a fundamental flaw in this marketplace. Federal law bars consumers from purchasing prescription medications for their pets unless they receive permission (in the form of a prescription) from a licensed veterinarian, who in the vast majority of cases also sells the prescribed medication. The flaw is exacerbated by the ability of veterinarians to prescribe, and lock the pet owner into, brands of medications distributed only through veterinarians, and which the pet owner effectively may not be able to buy from any veterinarian other their own. This whole scheme has led to a variety of anti-competitive market abnormalities and sets up an inherent conflict of interest in which the consumer – or pet owner – can be, and often is, entrapped.

While imposing these restrictions on consumers, and so empowering veterinarians, the federal government has not concurrently instituted any provisions to prevent this entrapment, promote competition and choice and assure proper operation of this marketplace. It became clear from the testimony received at the Workshop that by stepping in this marketplace by requiring consumers to

obtain a prescription before being able to purchase medications without also addressing the implications of this restriction, the federal government has unintentionally engendered a dysfunctional marketplace where those empowered by this federal prescription requirement are free to exploit their market power to the pet owner's disadvantage. At the same time, I hope the FTC will take note of the special influence veterinarians can have over consumer's purchasing habits regarding non-prescription health-related and specialty products

I believe that veterinarians, no matter how much we love them, are abusing their recommendation and prescribing power to their own financial benefit. They are in a tough spot. Because there are no ground rules to protect the consumer from the fundamental conflict of interest in the prescribing and sale of pet medications, veterinarians who do not wish to exploit this conflict of interest and follow the playbook of locking in the consumer, risk being noncompetitive with other veterinarians and clinics in their community. The Federal government needs to set rules regarding prescription release and the distribution of medications to establish an even playing field for whose veterinarians who want their customers to benefit from choice and competition.

Manufacturers for their part are all too happy to restrict distribution of their products and brands to an exclusive vet clinic market place in order to achieve profits resulting from monopolistic distribution and selling. As we heard at the Workshop, manufacturers (including manufacturers who will distribute extremely dangerous human medications to pharmacies, but not simple, basic pet medications to these very same pharmacies) and distributors engage in all sorts of anti-competitive activities. While claiming a "health" justification for this discriminatory policy, these same manufacturers even refuse to sell to veterinarians who legally dispense on valid prescriptions written by other veterinarians. . Testimony was also received about distributors engaging in exclusive arrangements with certain manufacturers, the chief results of which is to restrict competition and prevent consumers from obtaining generic alternatives.

There is a fairly basic principle at stake here. If the federal government is going to step into the marketplace and restrict consumer freedom, it must also take steps to protect the consumer by assuring that the marketplace operates properly, and that competition is promoted.

There are precedents where consumers are protected when purchasing a medication only available through prescription. When a parent takes his or her child to their family physician, and the child needs medication, it is pretty simple. The physician gives the prescription to the parent – automatically, without the parent having to ask, sign a waiver or pay a fee. The parent can then take the prescription to the pharmacy of his or her choice. Once at the pharmacy, the parent can have the prescription filled by a generic if the drug is off patent.

During the workshop, the claim was made that most veterinarians already write prescriptions upon request. The argument was also made that prescription release carries a health risk because, the theory goes, there is a lack of product information sheets/package inserts when human drugs are used for animals and pharmacists are limited in their ability to address the idiosyncrasies of different animal species. But, no data was provided verifying the claim that prescriptions are being released

upon request. In fact, the claim ignores the testimony received at the Workshop, and the experience of retailers indicating that prescriptions are not being released, and when they are, veterinarians commonly ask for a fee and/or require signing of an intimidating waiver in exchange for the release. The claim also fails to address the fact that many pet owners are either unaware that they can request a copy of the prescription or are reluctant to ask for a copy out of concern it will impact the care their pet receives.

Beyond that, it is incongruous for veterinarians to claim both that they release prescriptions but that there is a negative health impact when they do release. If there was any quantifiable or realistic health concern with release, the AVMA would have never adopted provisions in its Principles of Veterinarian Medical Ethics stating in an unqualified manner that “veterinarians should honor a client’s request for a prescription in lieu of dispensing.”

Human physicians write a prescription every time without a patient request. Providing a prescription ensures customer choice and eliminates the conflict of interest of having a medical practitioner financially benefiting from writing and filling their own prescriptions. As with human medicine, pharmacists will dispense medication to pet owners according to the dispensing and usage guidelines provided by the veterinarian. In fact, the information and data from package inserts are being made available by manufacturers, suppliers and retailers through training tools, online tutorials and other means.

Furthermore, the idea that pet owners will not save money if automatically handed copies of their prescriptions is preposterous. For example, consumers can save roughly 50% off prices of branded product available online by purchasing generic versions of Heartguard. Most veterinarians don’t recommend or carry the generic versions in their clinic – which is surprising given the Heartguard drug went off patent in 2008. The amount pet owners could save buying a generic version of Heartguard is even more pronounced when compared to the price of Heartguard at their veterinary clinic.

Enabling consumers to save 50% or more on heartworm medication would drive down pet care costs above and beyond the savings on the product. Heartworm disease is preventable with this medication, but is very expensive to treat if contracted. The more consumers can save on the medication, the more pet owners will use the product, and the fewer pets will contract the disease.

None of the protections afforded to human patients are available to pet owners. From the testimony received at the Workshop, it is clear that pet owners should have the same or greater protections. I will point out that the savings can be quite substantial (how much do Americans spend on heartworm medication? How much would they save if they had a generic alternative?)

At the Workshop, it was argued that the breadth of companion animal medicine made the comparison to ocular health tenuous. Although specialization in human health has led to a more narrow administration of care by any single physician, the human pharmacist receives prescriptions from a wide range of physician specialists and administers drugs that treat a wide range of systems, diseases, and medical need.

It is also important to note that the claim that pets require a higher standard of direct administration of medicine by the veterinarian is in part predicated on the logic that the ethics of treating pets is the same or similar to human care. Across the board, in terms of measuring the cumulative positive impacts and cost savings that arise from changing the access, affordability and administration of pet medications verses the adverse side effects it is important to be realistic about the ethics of pet verses human treatment.

With the goal of improving the general welfare and health of pets, I believe a greater good is achieved by allowing the masses to better treat their pets through affordable and accessible treatments even if there is a small increase in adverse outcomes resulting from less veterinary administration. It is also important to note that veterinarians walk a fine line in terms of pet ethics. On the one hand, veterinarians argue that pets are family members and deserve human like treatment and medical safety. On the other hand, veterinarians want to be sure that pets remain legally defined as chattel for purposes of minimizing the risk of growing medical malpractice concerns. Overall the standards of safety, cumulative benefit, and costs must be viewed through the lens of pet ethics not human ethics.

While employed at WalMart, and even afterwards and up until today, I have thought quite a bit about what mechanics or drivers of change could help correct what I believe is a flawed pet medication and pet specialty products market. I'm hopeful that the FTC will take the necessary action to break the government-facilitated monopoly resulting from the combination of legally established prescribing power and exclusive distribution of key pet medications. While there are several catalysts that could initiate the necessary market correction, by fulfilling its mission to protect consumers from anti-competitive market forces, the FTC could make a very meaningful contribution to protecting consumers. In the process of establishing a fair and open market, the pet medication market will grow and more pet owners and their pets will enjoy greater access to technology and respected brands.

Attached is a discussion of key topics that I urge the FTC consider in taking actions to remedy this market. Also attached are the texts of my prepared remarks given at the Workshop.

Thanks again for looking into this important issue and considering my ideas. Please contact me if I can be of additional service to you and the good work you do.

Sincerely,

Nate Smith

Enclosures

## Discussion of Key Topic

**1. Consciousness of Choice** – If customers are handed a written prescription every time a pet medication is prescribed, with no fees or wavers, pet owners will know how to use the prescription to seek out and find the best value. The utility automatic prescription release plays in effectively and efficiently informing the consumer of his or her ability to choose is a fundamental principle which underlies both the FTC’s “Eyeglass Rule”, and the Fairness to Contact Lens Consumers Act.

Customer value is a function of having choice across comparable products, convenient access, in combination with price. For many (and likely most) the vet clinic will continue to be the best value or place to shop based on immediate access, service and convenience -- even if the price is higher. For others, their familiar pharmacy with lower prices will be the best value. To others having new alternative products including generics will create value.

To preserve their business and market advantages, veterinarians argue that customers do not need a prescription and that this would result in a significant burden to write and verify prescriptions. Every other practice of medicine demonstrates that writing a prescription on paper and verifying and working with pharmacists is not a crippling expectation of health practitioners, and in fact involves minimal effort on the part of prescribers (note that veterinarians are already writing the prescription information into the pet’s medical file, and could simply use carbon pads as do many physicians).

Customers should have the right to their prescriptions and the right to shop in a competitive market. Requiring prescription release will drive innovation and new product choices, will result in efficiency as product sellers compete, and in the end prices for new innovative products, generics and brands will all be lower as a result of healthy market forces.

**2. Personal Financial Conflict** – During the FTC Workshop and in the subsequent AVMA press release regarding the event, the claim is made that veterinarians make recommendations based on a therapeutic need and that vets work with patients to secure the most affordable product. Of course, the prices pet owners are charged for filling prescriptions from alternative channels are inflated because of the inability of those channels to obtain product directly from manufacturers.

The fact is veterinarians have a personal financial interest in selling product at their clinic -- which makes the claim of objectivity and aggressively seeking the best customer value about like a promise made by the fox guarding the hen house. During the Workshop, the AVMA proudly pointed to the provision of its voluntary code under which veterinarians are urged to issue prescriptions upon a pet owner’s request. Notably, the provision does not bar the veterinarian from charging a fee for the release, or requiring the pet owner to sign an intimidating waiver form.

In any event, when it comes to prescription release, such “by request” provisions do not work. They do not provide pet owners with the same level of knowledge regarding their ability to choose alternatives which automatic release provides. They put the pet owner squarely in the crosshairs of the conflict of interest, placing him or her in the difficult, and often intimidating position of having

to ask a health care provider for permission to purchase products elsewhere. They lead to discriminatory pricing, whereas the pet owner who requests a copy of the prescription is frequently quoted prices competitive with online alternative sources, while those who do not request are left paying the higher, usual, retail price.

In years past, we expected our human physicians to act objectively in prescribing medications and other products - yet a legal and regulatory framework that requires a separation of prescribing and filling and limiting the conflict of personal financial conflict developed. This framework is also memorialized in the American Medical Association's Code of Ethics, which provides that where there is the potential of a conflict of interest between the physician's financial interest and that of the patient, the physician is required to so advise patients, and resolve the conflict to the patient's benefit.

What the AMA Code recognizes is that a patient whose interest is in receiving quality health care is placed in a difficult, if not impossible, position, when the health care provider sells health care products or additional services to that patient. The same holds true for pet owners.

There is no justification or promise making about putting pet owners above a veterinarian's personal financial interest that can provide the same consumer protections and fairness as the enforcement of regulatory or legislative rules. Genuine concern for pets does not justify the veterinarian conflict of prescribing and selling product and realizing profit. Human physicians love their patients, but that doesn't justify exploiting their prescribing and recommending power to their own financial gain. Pediatricians love and have concern for the children in their care, oncologists love and have concern for their struggling patients, emergency physicians have an urgency for the welfare of those in their care – but regardless of their concern, love, or sincere commitment they cannot profit unfairly in a non-competitive way leveraging their exclusive power to recommend and administer medicine.

Human physicians rightfully make money for providing their expertise and administration of medicine. However, patients have the ability to select a physician, change physicians, seek out additional opinions about treatment options. Given the patient's choice in securing treatment ultimately physicians achieve financial success as they demonstrate expertise and skill in their work. A physician's success financially is predicated on objective and effective administration of medical expertise. It is not based on leveraging exclusive distribution and unique prescribing power.

The claim of veterinarians that their profound concern for animals in their care is adequate justification to prescribe and fill prescription medications is ridiculous. In addition to prescription medications veterinarians equally abuse their recommending power on exclusively distributed food and nutrition products as well as over-the-counter medications.

**3. Level Playing Field** – At the FTC Workshop, Dr. Pion argued that what veterinarians really want is a “level playing field”. Given that vets currently enjoy an advantaged position as a result of exclusive distribution plus prescribing and recommendation power, Dr. Pion in actuality was asking for was a continued ability to achieve profits that exceed what's possible in a competitive market. Dr. Pion and other vets attending the Workshop commented on the makeup of vet clinic

revenues and explained that product sales, including medications, subsidize vet services. They assume, without providing any documentation whatsoever, that the market will remain static, and that reducing the cost of pet care will not increase the number of pets or the amount of care sought by pet owners.

The resistance of the veterinarian community is no doubt rooted in the fear and the uncomfortable financial friction associated with losing product revenue and the need to reset the economics associated with providing veterinarian services. As vet clinics have started to lose pet medication sales to the Internet and as vet clinics are forced to lower their prices to be competitive, the remedy Dr. Pion seeks is impossible. The possible remedies would be to restore pure restrictive distribution and eliminate all diversion and competition or to have some sort of pricing mandate to set and protect the vet clinic prices from competition. Ironically, the “level playing field” Dr. Pion and the Vets covet is returning to a place with no competition or in which rules are created that curtail competition, to the financial detriment of the consumer..

**4. Supply Chain** – in an open and competitive market, veterinary clinics will not be a leader in efficiency. (However, as the “gate keeper”, they will have the opportunity to be a leader in providing service, and convenience). Vet clinics will suffer less efficient in-bound distribution of pet products and will be less efficient in the management of inventory and sales. This is particularly true for higher weight products like specialty pet food. As the market opens, larger sellers will begin to create more negotiating leverage with manufacturers. Today, small independent clinics and small clinic groups dominate the vet clinic market. The fragmented vet clinic market comprised of small clinic players leaves the manufacturers and pharmaceutical companies in a position of power.

As sales aggregate to bigger players like pharmacy chains, because of efficiency in operations and increased purchasing scale, there will be more parity between manufacturers and sellers resulting in lower cost of goods leading to better prices to pet owners. Manufacturers today, including the large medication and food companies, have an interest in maintaining the current fractured distribution system to small independent veterinarians because it leaves them in a position of negotiating power and assures them of higher prices at the expense of pet owners..

**5. Market Growth** – In a market with artificially high prices based on anti-competitive behavior between current manufacturers and sellers, demand for products is restricted. Despite the fear of change and the short-term friction of competitive markets reaching a new equilibrium, when a competitive market is created, prices will drop, new products -- including generics -- will be distributed, and the market will grow. More pet owners will be able to afford medication and specialty products that currently find too expensive. Supply of products will increase leading to lower prices and increased unit sales. As the market grows manufacturers, distributors, veterinarians, pharmacies, and all other retailers --- and most important pet owners and their pets will all be better off.

**6. Antitrust** – In the current market, consumers are locked in. As was described in the Workshop, veterinarians are not pharmacies and may be limited in their ability to fill prescriptions

written by other veterinarians. . The inability of pet owners to access product outside the prescribing veterinarians office gives the veterinarian extraordinary prescribing power. In the absence of product diversion and some resulting market choice, the exclusive prescribing and filling rules represent a blatant antitrust problem.

With pet medications which are subject to restrictive distribution, and for which diversion is limited, a veterinarian has near total pricing power over the pet owner. The consumer's only choice is to either purchase the prescribed medication at the veterinarian's price, or pay a significant switching fee to an alternative veterinarian, who will charge for an exam before being able to dispense the medication. As was revealed at the FTC Workshop, the anti-competitive aspects of this market are exacerbated and exploited by exclusive dealing arrangements entered into between the distributors of, and the manufacturers of, the most popular pet medications. I believe this is an issue that the FTC should investigate and take appropriate corrective measures with or without legislative change related to pet medication prescription release.



**Statement of Nate Smith**  
**FTC Workshop on Pet Medications**  
**Panel on Prescription Release**  
**October 2, 2012**

My name is Nate Smith, and I appreciate having the opportunity to participate on this panel. I commend the Federal Trade Commission for looking at this issue, and I hope this is the beginning of a process as opposed to its conclusion.

Right now, if your child needs medication, you as a consumer have protections. The doctor gives you a copy of the prescription – without you having to ask, sign a waiver, or pay a fee. You can take that prescription to the pharmacy of your choosing. Once you get there, you frequently have the option of a generic alternative.

If your dog needs medication, you have no right to automatically receive a copy of the prescription. Once you get the prescription, you are limited as to where you can get it filled. And when you do get it filled, odds are it will be with a name-brand pharmaceutical.

So, when your child needs an antibiotic, you can go to a pharmacy and pay \$4 or \$5 for a full month supply. When your dog needs the same antibiotic, your vet will charge you \$30 or \$40 for the same treatment.

Something is obviously amiss, and I commend this agency for looking into why.

Allow me to make five points.

1. This is an issue which affects most Americans. 73% of Americans are Pet Parents. We spend \$7 billion a year on medicines and related health products for our pets. Many Americans, if not most, view their pets as members of their family. They want the right to comparison shop for their pet's medicines – just like they do for their own or their children's medicines. And they do not understand why they cannot.
2. There is a central conflict of interest where the veterinarian is also the retailer and can prescribe or recommend brands sold exclusively through prescribers. In a marketplace like this, the government must set rules to assure consumer choice and competition – just as the government has done with eye glasses and contact lenses.

The government needs to act because the prescription requirement plus the inherent authority which comes from wearing a white coat puts the veterinarian in a unique position of power. This power can be used by the veterinarian to dictate the consumers' purchasing decisions, or, in the case

of non-prescription products, to heavily influence what a consumer buys under the belief it is best for their pet's health.

3. Having the prescription put directly and automatically into the hands of the consumer, without requiring the consumer to ask for it, sign a waiver, or pay a fee – is absolutely key. That piece of paper lets the consumer know he or she has a choice. It is the most effective, most efficient, means of creating a consciousness of choice.

4. Pet care is a discretionary expense. If choice is spurred and competition encouraged, prices will drop, convenience will be created, and Americans will buy more pet care to the benefit of all – to the pet owner, to the pet, and to the veterinarian community.

5. We must not lose sight of the big picture -- this is a very tough economy. Every indication is that it will remain that way for the foreseeable future. Americans at most income levels are looking to save money.

It is also a different economy. Many families are burdened by severe time constraints, so convenience matters.

The Internet, and purchasing using the Internet has become the norm rather than the exception. So, while a couple of decades ago, buying pet medications only from your vet may have been the only practical choice, the world is much different today.

The federal government is already in this marketplace – it bars pet owners from buying most medications without a prescription. I hope the government will step in again to allow this marketplace to operate like those for other prescription items – whether that is prescription drugs, eye glasses or contact lenses.

Doing so will allow consumers to reap the full benefits of technological advancements and have the freedom to purchase their pet meds where they want based on the best price, service and convenience.

It was decades ago that the FTC, in issuing the Eyeglass Rule, recognized that automatic prescription release is essential to letting consumers know they have a choice.

As the FTC stated in its 1997 review of the Rule, it issued “this automatic release requirement based on a finding of consumers’ lack of awareness” that eyeglass could be purchased separate from the exam.

Automatic release is still the most effective and efficient means of letting consumers know they have a choice. As the FTC stated in its 2004 review of the Eyeglass Rule:

“Release might not occur in the absence of a federal release requirement” and  
“release of prescriptions enhances consumer choice at minimal compliance cost to  
eye care practitioners”

I urge the Commission to apply these same principles to pet medications.

**Statement of Nate Smith**  
**FTC Workshop on Pet Medications**  
**Panel on Restrictive Distribution**  
**October 2, 2012**

My name is Nate Smith, and I appreciate being given the chance to participate in today's workshop.

Because of the distribution practices in this industry, consumers pay more. They are limited as to where they can buy pet medications. And they are, in many cases, denied the chance to buy less expensive alternatives.

This is an important issue in this economy. Americans want to save money. They are demanding good service. They want convenience so they can save time.

When it comes to purchasing medications for their pets, consumers are at a severe disadvantage. They can't buy pet medications without a prescription. The prescriber – in this case the veterinarian – chooses the medication, and is free to choose a medication distributed only through veterinarians.

But this system, with its inherent conflicts of interest, also puts the veterinarian in a tough spot.

It's unfair to both, and the government should step in to assure consumers are treated fairly, their ability to choose is protected, and competition is allowed to flourish.

Allow me to summarize my remarks into five points.

1. The distribution practices for pet medications costs consumers' money. These practices inflate prices for pet medications, and limit competition. They discourage the prescribing of generics – which would save consumers money in and of itself, put downward pressure on prices for name brand drugs, and serve as a strong incentive for pharmaceutical manufacturers to develop new drugs.
2. Veterinarians choose the medication and the brand. This makes the marketplace much different than for consumer products. It is fine to limit channel distribution if you manufacture a premium brand that you want associated with, say, Nordstrom as opposed to Wal-Mart or Costco. But, it's not okay when legally established prescribing power is combined with exclusive distribution.
3. Pharmaceutical manufacturers can engage in practices with pet medications that they could never do with human medications. There are examples of manufacturers giving gifts to veterinarians, protecting them from price competition, and rewarding them with “extra” product that can be resold.

In 2011, Elanco sent a letter to veterinarians highlighting and then condemning the decision by a competing pharmaceutical company to sell its products outside the veterinarian channel. I ask that a copy of this letter be made part of the record.

4. Veterinarians can engage in practices which human physicians do not, or can not. Under the American Medical Association's Code of Ethics, where there is the potential of a conflict of interest between the physician's financial interest and that of the patient, the physician is required to so advise patients, and resolve the conflict to the patient's benefit.

The AMA Code recognizes that a patient whose interest is in receiving quality health care is placed in a difficult, if not impossible, position when the healthcare provider sells products or additional services to that patient.

Pet owners are the same. If they ask for a copy of the prescription, it puts them in an uncomfortable position of having to ask their health care provider for permission to purchase elsewhere. This is an unreasonable burden – which is why we don't have to ask for our prescriptions from physicians – or from eye doctors for that matter.

5. Finally, consumers have a right to know. They are grossly underrepresented in this marketplace, and they are the ones with the most at stake.

Consumers are unaware of the hostile market. Pet owners rightfully love their vets for the care they give. However, veterinarians have an identity crisis on the horizon. The system keeps prices high, discourages use of generics and more affordable or efficient alternative solutions, and blocks more convenient access.

So, I commend the FTC for holding this workshop, and I hope this is the beginning, rather than the end, of a process of examining this industry and bringing it more into line with how human medications operate.

When and if that occurs, it will benefit all – pet owners, their pets, veterinarians and manufacturers.